

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Investigation into) REGULATORY DIVISION
Improving Transparency, Fostering Accountability,)
And Maintaining Quality Services for High Cost) DOCKET NO. N2017.10.82
Support and Lifeline Services in Montana.)

Qwest Corporation d/b/a CenturyLink QC and CenturyTel of Montana d/b/a CenturyLink. (collectively, “CenturyLink”) submit these comments in response to the Notice of Investigation and Opportunity for Comments released on November 9, 2017 by the Montana Public Service Commission (the “Commission”). CenturyLink responds as follows to the questions posed by the Commission:

1. What opportunities exist for the Commission to more appropriately oversee ETC Services in Montana, as allowed by 45 U.S.C § 254(f)?

In 2011, the FCC released its *USF/ICC Transformation Order*¹ implementing landmark reforms of universal service support for voice and broadband in rural areas that created the Connect America Fund (CAF). The CAF’s express goal is to bring broadband access to the more than 18 million mostly rural Americans who lack it. The FCC’s actions in *USF/ICC Transformation Order* and many orders issued subsequently serve to transform the old voice-centric universal service fund for high-cost rural and remote areas into a mechanism for accomplishing broadband deployment to underserved Americans. To meet these goals without growing the fund beyond its current size, the FCC also imposed fiscal responsibility and accountability measures and established mechanisms to target funding more accurately and effectively. In

¹ FCC 11-161, *USF/ICC Transformation Order*, released November 16, 2011.
https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf

Service Date: January 18, 2018

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IN THE MATTER OF the Investigation into) REGULATORY DIVISION
Improving Transparency, Fostering)
Accountability, and Maintaining Quality Services) DOCKET NO. N2017.10.82
for High Cost Support and Lifeline Services in)
Montana.)

**NOTICE OF STAFF ACTION EXTENDING COMMENT DEADLINE
AND NOTICING PUBLIC HEARING**

1. On October 17, 2017, the Montana Public Service Commission (“Commission”) voted to initiate an investigation into various issues to improve High Cost Support and Lifeline Services in Montana.

2. On November 8, 2017, the Commission issued a Notice of Investigation and Opportunity for Comments, which requested comments from interested parties on a variety of issues to be submitted to the Commission by January 20, 2018. The Commission extends the deadline to submit comments from the above date, to **January 31, 2018**. To provide comments, interested parties should: (1) electronically submit their comments on the Commission’s website at <http://psc.mt.gov> (“Account Login/Registration” under “Electronic Documents” tab); and (2) physically deliver or mail the original comments to the Commission at 1701 Prospect Avenue, Helena, Montana 59601. The Commission will not post electronically filed comments to its website until it receives the physical copy.

3. PLEASE TAKE NOTICE that the Commission will conduct a public hearing for this docket on April 6, 2018, at 1:30 PM MST, in the Bollinger Conference Room located at the Commission’s address listed above. The Commission’s jurisdiction over this matter is provided at Title 69, Montana Code Annotated. State law vests the PSC with "full power of supervision, regulation, and control of public utilities." Mont. Code Ann. § 69-3-102 (2015). The PSC may at any time “upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services” of a utility. Mont. Code Ann. § 69-3-324. Rates must be "reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful." Mont. Code Ann. § 69-3-201. The substantive and procedural law applicable is Title 69, Montana Code Annotated, especially at Ch. 3 (public utilities), Administrative Rules of Montana Title 38, Ch. 5 (utilities),

Title 2, Ch. 4, Montana Code Annotated (MAPA), Administrative Rules of Montana Title 38, Ch. 2 (PSC procedural rules), and any prior orders of the PSC which may bear on the issues presented. The hearing is for the purpose of receiving technical evidence (testimony and exhibits) addressing the investigation. Testimony submitted at hearing is subject to cross-examination.

4. Anyone needing accommodation for a physical, hearing, or sight impairment in order to attend or participate in the hearing should contact the Commission at (406) 444-6199 at least one week prior to the hearing. The Commission will make every effort to accommodate individual impairments.

Questions regarding this notice should be directed to Zachary Rogala at 406-444-6187. Questions regarding the electronic filing process should be addressed to Shauna Simpson at 406-444-7618.

DONE AND DATED this 17th day of January, 2018, by delegation to Commission staff.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman
TRAVIS KAVULLA, Vice Chairman
ROGER KOOPMAN, Commissioner
BOB LAKE, Commissioner
TONY O'DONNELL, Commissioner

the *USF/ICC Transformation Order*², the FCC concluded a national, uniform framework for accountability, including unified reporting and certification procedures is critical to ensure appropriate use of high-cost support. The FCC wrote:

A uniform national framework for accountability, including unified reporting and certification procedures, is critical to ensure appropriate use of high-cost support and to allow the Commission to determine whether it is achieving its goals efficiently and effectively. Therefore, we now establish a national framework for oversight that will be implemented as a partnership between the Commission and the states, U.S. Territories, and Tribal governments, where appropriate. As set forth more fully in the subsections immediately following, this national framework will include annual reporting and certification requirements for all ETCs receiving universal funds—not just federally-designated ETCs—which will provide federal and state regulators the factual basis to determine that all USF recipients are using support for the intended purposes, and are receiving support that is sufficient, but not excessive.³

The FCC concluded that states could impose additional reporting requirements but also noted the benefits of a consistent uniform reporting and certification framework and that the information provided under the national framework should support the factual basis for states' annual ETC certifications.

574. Consistent with this federal framework, state commissions may require the submission of additional information that they believe is necessary to ensure that ETCs are using support consistent with the statute and our implementing regulations, so long as those additional reporting requirements do not create burdens that thwart achievement of the universal service reforms set forth in this Order.

575. We note, however, that one benefit of a uniform reporting and certification framework for ETCs is that it will minimize regulatory compliance costs for those ETCs that operate in multiple states. ETCs should be able to implement uniform policies and procedures in all of their operating companies to track, validate, and report the necessary information. Although we adopt a number of new reporting requirements below, we conclude that the critical benefit of such reporting – to ensure that statutory and regulatory requirements associated with the receipt of USF funds are met – outweighs the imposition of some additional time and cost on individual ETCs to make the necessary reports.⁴

³ FCC 11-161, *USF/ICC Transformation Order*, 26 FCC Rcd at 17740, para. 573 (footnotes omitted) https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf

⁴ FCC 11-161, *USF/ICC Transformation Order*, 26 FCC Rcd at 17740, para. 574-575 (footnotes omitted) https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf

In accordance with Section 254(e) of the Telecommunications Act, the FCC requires states that desire eligible telecommunications carriers to receive support pursuant to the FCC's high-cost program to file an annual certification with USAC and the FCC stating that all federal high-cost support provided to such carriers within the state was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.⁵ In the USF/ICC Transformation Order, the FCC reinforced states' involvement in the annual certification process:

610. Second, we maintain states' ongoing role in annual certifications. Several commenters take the position that responsibility for ensuring USF recipients comply with their public interest obligations should remain with the states. As discussed above, we agree that the states should play an integral role in assisting the Commission in monitoring compliance, consistent with an overarching uniform national framework. States will continue to certify to the Commission that support is used by state-designated ETCs for the intended purpose, which is modified to include the provision, maintenance, and upgrading of facilities capable of delivering voice and broadband services to homes, businesses and community anchor institutions.⁶

Since the *USF/ICC Transformation Order*, the FCC has issued several orders that further define the ETCs annual reporting obligations. On July 7, 2017, the FCC issued FCC 17-87⁷, a Report and Order that eliminates several ETC reporting requirements that are no longer necessary or useful for monitoring whether ETCs are using high-cost universal service support for its intended purpose. The Report and Order also eliminates the requirement for ETCs to file duplicate copies of Form 481 with the FCC and with states, U.S. Territories,

⁵ 47 CFR 54.314, https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=09a1634b10cc54aca75cca4aa6cd68d1&mc=true&n=sp47.3.54.d&r=SUBPART&ty=HTML#se47.3.54_1314

⁶ FCC 11-161, *USF/ICC Transformation Order*, 26 FCC Rcd at 17740, para. 610 (footnotes omitted) https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf

⁷ FCC 17-87, In the Matter of Connect America Fund ETC Annual Reports and Certifications. https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-87A1.pdf

and/or Tribal governments beginning in 2018.⁸ The FCC made relief from the duplicate filing requirement “contingent upon USAC’s completion of the rollout of an online portal for recipients of high cost services...”⁹

Based on the discussion above, the FCC made it clear that it expects itself and the states to rely on the data wireline ETCs file with USAC pursuant to 47 CFR § 54.313 for the factual basis to determine whether ETCs used, and will use high-cost support to satisfy their specific public interest obligations under the CAF. Further, the FCC emphasized that there is an ongoing role for states to monitor compliance of ETCs in meeting their public interest obligations and to continue to complete the annual section 254(e) certifications to the FCC. While the FCC recognized that states could require additional information to ensure ETCs are using support consistent with the FCC reporting requirements, the FCC noted the benefits of a consist uniform reporting and certification framework. On this topic, the FCC cautioned that any such additional information requirements should not create burdens that increase the regulatory compliance costs for ETCs that operate in multiple states.¹⁰

CenturyLink does not believe the Commission needs to impose any additional reporting requirements or processes in order to determine whether they can certify that ETCs have met their public interest obligations and that support has been used and will be used for the intended purposes. The FCC has established a national, uniform framework for accountability, including unified reporting and certification procedures that provide itself and the state commissions with the factual information to support a rigorous examination of

⁸ FCC 17-87, Report and Order, released July 7, 2017, ¶15. https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-87A1.pdf

⁹ *Id.*

¹⁰ FCC 11-161, *USF/ICC Transformation Order*, ¶574. https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf

whether to provide the annual section 254(e) certifications. Since the FCC established this framework for ETC reporting in the *USF/ICC Transformation Order*, it has continued to refine the reporting requirements to address the various aspects of the CAF program and to address issues that have arisen. Requiring additional ETC reporting requirements or formal proceedings beyond those established by the FCC would result in increased regulatory compliance costs for the ETCs and for this Commission. For these reasons, CenturyLink urges the Commission to restrain from imposing additional ETC reporting requirements or formal proceedings in completing their annual ETC certification reviews.

2. What opportunities exist for reforms to Montana law to improve ETC Services in Montana, as allowed by 45 U.S.C. § 254(f)?

a. Should the Commission be permitted to waive its duty to certify ETC utilities as found in Mont. Code Ann. § 69-3-840, and instead allow the FCC to assume jurisdiction for certification?

It is not clear from the Commission's question whether it is exploring actions needed to be relieved from its obligations to grant initial ETC designations as well as for issuing annual certifications that carriers have met the qualifications to receive federal high-cost support.

With respect to seeking relief for conducting reviews to rule on initial requests for designations of ETCs, state Commission participation in that process for carriers subject to the state Commission's jurisdiction is mandated by federal statute (see 47 USC § 214 (e)(2) and (3)). Therefore, in addition to changes to Mont. Code Ann. § 69-3-840 contemplated in the question, the Commission would need to determine how to be relieved of its obligation for initial ETC certifications established by federal statute.

If the Commission is also interested in exploring actions needed to be relieved of its obligations to complete annual certifications of ETCs to receive high-cost support pursuant to FCC rule 47 CFR § 54.314(a), CenturyLink is not aware of a state Commission pursuing such an approach and is uncertain of the process the Commission would need to follow to seek such relief. We expect the Commission would want to discuss this with the FCC before taking any action to discontinue its annual certification process or it could jeopardize the federal universal service support currently received by Montana ETCs, harming those companies, and ultimately Montana consumers.

- b. Should Montana repeal its Universal Service Fund statutes found in Mont. Code Ann. §§ 69-3-841 through -845, that establish authority to create a complementary Montana Universal Service Fund, but which has not been funded nor created since the statutes were enacted in 1997? In the alternative, should the statute be amended to modernize the language authorizing the state USF and, if so, how?**

In 2015, the Commission opened a docket (N2015.11.85) to investigate whether and how to establish a Montana Universal Service Fund that would enable the deployment of broadband-capable networks in locations that would not have access to broadband absent such support. CenturyLink filed comments supporting the establishment of a Montana Universal Service fund to complement the FCC's CAF and to provide support for enabling broadband capable networks in high-cost areas that were not receiving federal high cost support. After investigation, the Commission chose to not pursue establishing a state USF and closed the docket. CenturyLink continues to believe there may be areas in Montana that will not have access to broadband absent support from a state universal service fund. However, it

may be beneficial to allow additional time to pass to evaluate whether the FCC's CAF program accomplishes its goals of expanding access to broadband in the state and review at some point in the future whether a state program is needed. In the interim, CenturyLink believes the existing Montana universal service fund statutes should remain in place and be subject to a review in the future as the impacts of the FCC's CAF program are better known.

3. What opportunities exist for reforming Federal policy, either by statute or regulation, to improve ETC Services in Montana? The Commission seeks comment on the following issues:

a. Do ETC Program subsidies, by reducing incentives to innovate and economize, actually inhibit effective buildout of rural, insular, or high-cost areas, in contrast to the stated ETC principles in 47 U.S.C. § 254(b)?

CenturyLink believes the FCC's CAF program does not inhibit effective buildout of rural, insular and high-cost areas. To the contrary, it makes buildout possible in areas where innovation and economy alone are insufficient to allow for buildout. The CAF actually incentivizes innovation and economy. Specifically, the CAF II Auction involves competitive bidding for up to \$198 million of funding annually for 10 years to service providers that commit to offer voice and broadband service meeting FCC determined requirements to fixed locations in unserved high-cost areas. The auction will award ongoing high-cost universal service support through a multiple-round, reverse auction. The more innovative and efficient the bidders are, the more likely they will be able to win the reverse auction. The FCC is finalizing the auction details and the auctions are expected to take place in 2018. The FCC will also utilize a competitive bidding approach through reverse auctions to award support from its

Remote Areas Fund to fund broadband deployment to locations determined to be “extremely high-cost.”

- b. What objective evidence exists that subsidies, as opposed to paying the true marginal cost of services, are actually necessary for consumers to subscribe in high cost areas? On average, what would the additional customer cost amount to?**

The FCC addressed this issue in the development of the support benchmarks used in the offer of CAF II support to the price cap carriers. In the *USF/ICC Transformation Order*, the FCC adopted a methodology “that will target support to areas that exceed a specified cost benchmark, but not provide support for areas that exceed an 'extremely high cost' threshold.” About the support benchmark, the Commission stated that it would use a model (discussed in the next paragraph) “to identify those census blocks where the cost of service is likely to be higher than can be supported through reasonable end-user rates alone.”

The FCC developed a new forward-looking cost model, the Connect America Cost Model (CAM) to calculate the cost of providing voice and broadband service in rural and high-cost areas. The CAM estimates the monthly forward-looking cost of deploying a network that supports the provision of voice and broadband service meeting specific FCC determined requirements to every location. The FCC devoted significant resources to the development of the CAM and to the various inputs used by the model to perform the cost calculations. A key consideration in the FCC’s development of the CAM was establishing the funding benchmark. In their 2014 *CAM Inputs Order*, the FCC stated:

As noted, the *USF/ICC Transformation Order* stated that the funding benchmark should “identify those census blocks where the cost of service is likely to be higher than can be supported through reasonable end user rates alone....” Any

estimate of future revenues is necessarily a forecast, dependent on a range of reasonable assumptions. Below, we adopt a blended ARPU that reflects the revenues that a carrier can reasonably expect to receive from each subscriber for providing voice, broadband, and a combination of those services. Because not all locations will have active subscribers, we will adjust the ARPU by multiplying it by the expected subscription rate adopted below. The Bureau finds that multiplying the ARPU by the expected subscription rate will yield an estimate of the revenues that a carrier can reasonably expect to receive from the locations in each census block.¹¹

Based on the record before us, we conclude that an ARPU of \$75 is a reasonable assumption.¹²

We adopt an expected subscription rate of 70 percent for the purpose of estimating the amount of revenues a carrier may reasonably recover from end-users and, by extension, the funding benchmark.¹³

Based on these findings, the FCC established the \$52.50 benchmark (\$75 ARPU X 70% subscription rate) that it used in the development of offers of model based support to the price caps carriers. The FCC established \$198.60 as the extremely high-cost benchmark based on the total level of funding that was available. Using the results of the CAM, the FCC calculated the support necessary to serve areas where costs are above the \$52.50 benchmark, but below the \$198.60 “extremely high-cost” benchmark. The Commission then offered each price cap ETC a model-derived support amount in exchange for a commitment to serve a specific number of locations in its service territory in a state that, based on the model, fall within the high-cost range and are not served by a competing, unsubsidized broadband provider.

¹¹ WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964 (Wireline Comp. Bur. 2014) (*CAM Inputs Order*), para. 171.

¹² *Id* at para. 174.

¹³ *Id* at para. 177

- c. **Later this month, the FCC is scheduled to vote to issue notices which would seek comment on ending a national designation program for certain ETCs, requiring facilities-based service as a prerequisite to the receipt of Lifeline, propose a budget cap for the Lifeline program, and collaborating with States on verification of Lifeline eligibility, among other things. Should the Commission submit comments to the FCC regarding these proposals for reform? Fourth Report and Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, Consolidated Docket Nos. 17-287, 11-12, 09-147 (FCC Oct. 26, 2017).**

CenturyLink is currently formulating its positions on the issues identified in the order referenced above and anticipates filing comments, either on its own or as a member of US Telecom, by the due date of January 24, 2018. As such, CenturyLink is not prepared to offer a position on whether the Commission should likewise file comments in the FCC proceeding, or provide further input on the substance of our comments. However, if the Commission has specific input on the FCC's proposals, CenturyLink would encourage the Commission to share its positions with the FCC and other parties to the FCC proceeding.

- d. **Are there market-based alternatives, or technologies other than fiber-based broadband, that more effectively accomplish the goals of ETC Programs as stated in 47 U.S.C. § 254(b)?**

The CAF Phase II auctions described above will distribute support to any type of broadband provider that can meet the technology standards established by the FCC for the program. Electric cooperatives, major satellite operators, ILECs, rural cable operators and wireless internet providers are all potential participants for the CAF Phase II auctions. The results of the upcoming auctions will provide meaningful information on the state of technologies other than fiber-based broadband.

e. Should ETC Program funds be expended based on a priority of higher cost areas over lower cost areas?

The FCC's use of a forward-looking broadband cost model and competitive bidding in its CAF II program are intended to efficiently support deployment of broadband capable networks in high-cost areas. The CAF has been designed to provide support only in those areas where a federal subsidy is necessary to for deployment and operation of broadband capable networks. In establishing the funding benchmark of \$52.50 and setting the extremely high-cost benchmark at \$198.60, the FCC provided the parameters for the offers of model based support to the price cap carriers. Census blocks with costs between \$52.50 and \$198.60 and without an unsubsidized competitor present were eligible for CAF II funding. The use of competitive bidding through reverse auctions in the pending CAF II Auction and the future Remote Areas Fund are likewise intended to provide support for areas where the costs exceed the FCC cost benchmark.

Respectfully submitted this 19th day of January 2018.



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CERTIFICATE OF SERVICE

I certify that on the 19th day of January 2018, a true and correct copy of the foregoing was e-filed with the Montana Public Service Commission and duly served on the listed persons in the manner stated:

Will Rosquist Montana Public Service Commission 1701 Prospect P.O. Box 202601 Helene MT 59620-2601	<input type="checkbox"/> US Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail
Montana Consumer Counsel 111 North Last Chance Gulch P.O. Box 20173 Helena MT 59620-1703	<input type="checkbox"/> US Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail
